



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 9, 2016

Via electronic mail



RE: FOIA Request for Review – 2016 PAC 43338

Dear [REDACTED]

This determination letter is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2014)). For the reasons set forth below, the Public Access Bureau concludes that no further action is warranted.

On July 7, 2016, you submitted a FOIA request to the Chicago Police Department (CPD) seeking copies of the electronic recordings of the interrogation of Mr. Michael Ward by CPD detectives in connection with CPD's investigation of the death of a named individual. On July 19, 2016, CPD denied your request in its entirety pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2015 Supp.)). In its denial letter, CPD referenced section 103-2.1(g) of the Code of Criminal Procedure (725 ILCS 5/103-2.1(g) (West 2014)) as its basis for asserting the section 7(1)(a) exemption. On August 4, 2016, you submitted this Request for Review contesting CPD's denial.

Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." One such State law is the Code of Criminal Procedure (725 ILCS 5/100-1 *et. seq.* (West 2014)), which, among other things, governs how a law enforcement agency handles statements made during a custodial interrogation, including electronic recordings. Section 103-2.1(g) of the Code of Criminal Procedure provides:

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Any electronic recording of any statement made by an accused during a custodial interrogation that is compiled by any law enforcement agency * * * ***shall be confidential and exempt from public inspection and copying***, as provided under Section 7 of the Freedom of Information Act, and ***the information shall not be transmitted to anyone*** except as needed to comply with this Section. (Emphasis added.)

You appear to contend in your Request for Review that CPD waived its ability to deny the recordings in question under section 7(1)(a) because those recordings were disclosed to the *Chicago Tribune*. As support for this assertion, you provided a link to the *Chicago Tribune's* website¹ which contained an article regarding the underlying incident and a portion of a video recording of the interrogation of Mr. Ward by CPD detectives. However, this article also makes clear that the recording of the interrogation in question is a Cook County court record and that it was made public by Mr. Ward's attorneys – not CPD.² It is axiomatic that CPD does not waive its reliance on the section 7(1)(a) exemption when the electronic recordings you seek were disclosed to the public by someone other than CPD.

Because section 2.1(g) of the Code of Criminal Procedure specifically prohibits CPD from disclosing copies of the electronic recordings you are seeking and because the portion of those electronic recordings that is currently available for the public to view was not disclosed by CPD, we have determined that CPD did not improperly deny your FOIA request pursuant to section 7(1)(a) of FOIA. Accordingly, we have determined that no further action is warranted on this matter.

¹<http://www.chicagotribune.com/news/local/breaking/ct-hadiya-pendleton-police-interrogation-videos-met-20160610-story.html>.

²See Steve Schmadeke, *Video Shows how Detectives Obtained a Confession in the Killing of Hadiya Pendleton*, *Chicago Tribune*, June 10, 2016, <http://www.chicagotribune.com/news/local/breaking/ct-hadiya-pendleton-police-interrogation-videos-met-20160610-story.html> ("The entire 23-hour recorded interrogation --- made public by Ward's lawyers and reviewed by the Tribune --- provides a riveting look at how detectives methodically worked to gain a confession").

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If you have any questions, you may contact me by mail at the Chicago address listed on the first page of this letter. This letter serves to close this matter.

Very truly yours,

[REDACTED]
[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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